

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**JULIAN GREEN,**

**Plaintiff,**

**v.**

**Civil Action No. 2:09cv112**

**JIM RUBENSTEIN, Commissioner of Corrections,  
TERESA WAID, Warden of HCC,  
DAVID STELL, HCC Officer,  
OFFICER MORALES, HCC Officer,  
OFFICER MUSSI, HCC Officer,  
OFFICER WARNER, HCC Officer.**

**Defendants.**

**ORDER**

It will be recalled that on April 19, 2010, Magistrate Judge James E. Seibert filed his Report and Recommendation, wherein the Plaintiff was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within fourteen (14) days after being served with a copy of the Report and Recommendation. No objections to the Magistrate Judge's Report and Recommendation have been filed. Accordingly, the Court will proceed with consideration of the Report and Recommendation reviewing for clear error.<sup>1</sup>

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the Plaintiff in his Complaint, filed pursuant to 42 U.S.C. §1983, wherein Plaintiff alleges that he was assaulted by the named officer defendants, were thoroughly considered by Magistrate Judge Seibert in his Report and Recommendation. Moreover, the Court, upon a review for clear error of all matters now before it, is of the

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<sup>1</sup>The failure of a party to object to a Report and Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4<sup>th</sup> Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).

opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. Therefore, it is

**ORDERED** that Magistrate Judge Seibert's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

**ORDERED** that the Defendants' Motion to Dismiss be, and the same hereby is, **GRANTED**. It is further

**ORDERED** that the Plaintiff's Complaint be, and the same hereby is, **DISMISSED WITH PREJUDICE** for failure to state a claim and **STRICKEN** from the docket of this Court. It is further

**ORDERED** that the Clerk shall enter judgment for the Defendants. It is further

**ORDERED** that, if Plaintiff should desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, Plaintiff may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed in forma pauperis from the United States Court of Appeals for the Fourth Circuit.

The Clerk of the Court is directed to transmit a copy of this Order to all parties appearing herein.

**ENTER:** May 26<sup>th</sup>, 2010

/s/ Robert E. Maxwell  
United States District Judge